(b) where there has been no order of the Board fixing the rent of the premises, the standard rent increased to the extent following, that is to say:

(iii) in any case, to the extent set out in the third column of the First Schedule to this Ordinance in respect of the types of premises and the standard rents set out adjacent thereto in the first and second columns of the said Schedule."

The relevant part of the said Schedule is as follows:—

Type of premises.	*Standard rent.*	*%.*
Premises used wholly or partly for purposes other than human habitation.	Up to and including $150 per month.	25%.

I am satisfied that the standard rent is $110 and therefore the permissible increase would be 25% of $110 which amounts to $27.50. The maximum recoverable rent according to my calculation would be $137.50. Any sum above this figure would be deemed to be excessive. It is common ground that the defendant was paying $140 per month since the commencement of the tenancy, that is, from 1st May 1958 until its expiration on 30th April 1966. The premises, however, became de-controlled from 1st July 1962. It is clear as from that date the premises were not subject to the said Ordinance. It is therefore evident that the defendant had been paying an excess rent of $2.50 per month thus amounting to $125 for 50 months. He therefore succeeds on the counter-claim to the extent of $125 with costs on the lower court scale.

There will be judgment for the plaintiff as prayed on the claim and costs. The defendant is to deliver vacant possession of the said premises forthwith.

Order accordingly.

Solicitors: *Skrine & Co.; Shook Lin & Bok.*

THONG SEONG POH & ANOR. v. THONG MENG TEE

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) & Ong Hock Thye F.J.) May 16, 1967]

[K.L. — Federal Court Civil Appeal No. X. 56 of 1966]

Landlord and Tenant — Statutory tenant — Assignment of tenancy — Order for recovery of possession by landlord — Control of Rent Ordinance, 1956 — Abuse of Ordinance.

This was an appeal from the judgment of Ismail Khan J. ([1967] 1 M.L.J. 23) upholding the decision of the learned president granting the respondent an order for the recovery of possession of premises to which the Control of Rent Ordinance applied.

Held: all the cogent facts and other significant circumstances were taken into account by the learned president and the trial judge and the appeal had no more merits in law than on the facts and should be dismissed with costs.

Per **Ong Hock Thye F.J.:** "For myself, I have no doubt that the first appellant was the principal and the second defendant his assistant in a piece of sharp practice designed to deny the landlord possession of his own property. That they have succeeded for twenty years is one of the unfortunate effects of rent control. The Ordinance was scandalously abused in this case."

Case referred to:—

(1) *R.* v. *Cook* [1959] 2 W.L.R. 616, 622.

FEDERAL COURT.

Dato' S. P. Seenivasagam for the appellants.

Atma Singh Gill for the respondent.

Cur. Adv. Vult.

Ong Hock Thye F.J.: The appellants, father and son, were defendants in an action in the Sessions Court at Kuala Pilah, which resulted in the plaintiff, the present respondent, obtaining an order for the recovery of premises to which the Control of Rent Ordinance, 1956 applied. They failed in their appeal to the High Court at Seremban and now appeal to this court. For convenience I shall refer to them hereinafter as plaintiff and defendants.

The parties were and are hardware dealers. In 1947 the plaintiff purchased the premises in question, a shop-house No. 45 Main Road, Bahau. The first defendant was then a sitting tenant occupying, with his family, half of the premises and carrying on business under the style of Chip Thye. In 1950 the first defendant applied to the Rent Assessment Board for revision of rent. On July 2, 1951 the plaintiff sent him a notice to quit, which was duly served. In the result the first defendant thereafter became a statutory tenant, by virtue of section 20(a) of the Ordinance. On October 9, 1959 he registered with the Registrar of Businesses a transfer of the business to his son, the second defendant, in contemplation of his own demise and in order to save estate duty. On October 1, 1962 ownership of the business was transferred back to the first defendant.

Meanwhile, in August 1961, another shop-house, No. 40 Main Road, Bahau, a few doors away from No. 45, was purchased in the names of the first defendant's wife and daughter. On November 15, 1961 a notice in a Chinese-language newspaper, *Sin Chew Jit Poh* advised the public of the impending purchase by "Chip Thye" of the premises No. 40, Main Road. Although the first defendant disclaimed any knowledge of this advertisement, both the president of the sessions court, at first instance, and Ismail Khan J., on appeal, were equally satisfied to the contrary. I may as well say it now, instead of later, that I fully agree with their concurrent findings of fact on this point.

The line of business started in the newly acquired premises, No. 40, was the same as that carried on in No. 45. The registered proprietors purported to be the second defendant and his sister, a seamstress in Singapore. The entire family moved into residence in No. 40, but the first defendant himself retained a *pied-á-terre*

alone in No. 45 by sleeping alternate nights on a camp-bed therein. A business card, which the first defendant admitted was printed on his instructions, invited customers to "Chip Thye & Co." in both premises No. 40 and 45, using the same Telephone No. 14. The line to No. 40 was an extension of the telephone long in use in No. 45. Any caller to "Chip Thye" on the telephone book would, of course, be put through to No. 40 or 45 as may be decided at the receiving end. All these cogent facts, and other significant circumstances, were taken into account by the president of the Sessions Court and by Ismail Khan J. The judge, upholding the findings of the president, came to the conclusion that the true state of affairs was "that the purchase of No. 40 Main Road was in fact made by the first appellant and registered in the names of his wife and daughter for the same reason that he assigned his business to the second appellant, his son, on 9th October 1959." Although the transfer of the business at No. 45 was undone in 1962 it served to destroy his statutory tenancy. Ismail Khan J., in my view, was perfectly correct in so holding. On the evidence he was satisfied that the purported transfer of the business from father to son included a transfer of the tenancy. For myself, I have no doubt that the first appellant was the principal and the second defendant his assistant in a piece of sharp practice designed to deny the landlord possession of his own property. That they have succeeded for twenty years is one of unfortunate effects of rent control. The Ordinance was scandalously abused in this case.

Having said so I shall only add that this appeal has no more merits in law than on the facts. As to costs Ismail Khan J. has given reasons why he exercised his discretion as he did, quoting Devlin J. (as he then was) in *R.* v. *Cook* [1] as authority. With respect I agree.

I would accordingly dismiss this appeal with costs, affirm the judgment of Ismail Khan J. and affirm the order of the president, sessions court, to the effect that the first appellant do deliver up vacant possession of premises No. 45 Main Road, Bahau, to the respondent on or before June 30, 1967; *mesne profits* at $65 per mensem commencing from July 31, 1964 unless heretofore paid at such rate.

Barakbah L.P. and **Azmi C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *S. Seenivasagam & Son; Atma Singh Gill.*

TAN GIM SENG v. GURDEV SINGH GILL

[O.C.J. (Winslow J.) May 17, 1967]

[Singapore — Suit No. 90 of 1966]

Negligence — Skidding — Skid by the defendant's car resulting in injury to plaintiff — Whether brought about by defendant's default — Whether defendant negligent.

Road Traffic — Skid — Vehicle swerving to avoid accident — Collision with innocent party in swerving to avoid oncoming traffic — Whether driver negligent.

The defendant swerved his motor car to the right to avoid a cyclist who cut diagonally across his path. In the result he collided with the said cyclist and his car got on to the wrong side of the road. To avoid colliding with oncoming traffic he swerved violently to his left to get back to his correct side of the road and in doing so his motor car skidded. It was drizzling and the road was probably wet. The defendant tried to control the motor car by applying his brakes and steering to the right but the motor car collided with the plaintiff who was riding a bicycle and who was a completely innocent party.

Held: (1) the collision with the first cyclist was brought about by the sole negligence of the said cyclist;

(2) the ordinary reasonably careful user of the road today could not have done very much more than what the defendant did to try to control the motor car when it skidded and in the circumstances the defendant was not negligent.

Cases referred to:—

(1) *Hunter* v. *Wright* [1938] 2 All E.R. 621.

(2) *Richley* v. *Faull* [1965] 3 All E.R. 109, 110.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

Tan Tee Seng for the defendant.

Cur. Adv. Vult.

Winslow J.: The question I have to decide in this case is whether the skid in question which led to the collision with the plaintiff was brought about by the defendant's negligence and, if not, whether he dealt with the skid in the proper manner so as to avoid the result of such skid.

I have no doubt that the collision with the first cyclist earlier on was brought about by the sole negligence of that cyclist. In attempting to avoid him the defendant swerved to his right. Complaint was made that he should have applied his brakes. The defendant says that he thought a swerve to the right was the better of the two alternatives. I cannot say that he was negligent in doing so in the emergency that faced him. In swerving back to his former course his car skidded after travelling 20 feet from the first collision and swivelled round and came to rest on the left hand kerb facing in the opposite direction after knocking down the plaintiff.

I accept the explanation given by the defendant that he did all that he could to avoid both collisions. Moreover, there is no evidence of excessive speed or of bad or careless driving on his part. He is also supported by an eye-witness who saw the first collision whose evidence, which is to the effect that the first cyclist cut across